

**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT**

Docket No. TYHC:0110-5

(009103-009632US)

In re Application of: Clark R. Baker Jr. et al.
Application No. 10/806,647
Filed: March 22, 2004
For: Pulse Oximeter with Parallel Saturation Calculation Modules

Petitioner, Nellcor Puritan Bennett, is the owner of 100 percent interest in the instant application. Petitioner hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as shortened by any terminal disclaimer, of prior Patent No. 6,836,679. Petitioner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, petitioner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Pursuant to 37 C.F.R. § 3.73, the undersigned has reviewed the evidentiary documents, specifically, the Assignment of the instant application to Nellcor Puritan Bennett, which has been recorded at 008204/0126, and certifies that, to the best of his or her knowledge and belief, title of the instant application is in the name of Nellcor Puritan Bennett.

For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned (whose title is supplied below) is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

12/11/06

Date

Signature

12/19/2006 BABRAHA1 00000138 10806647

02 FC:18.4

130.00 0P

Michael G. Fletcher, Attorney for Assignee
Typed or printed name and title if applicable

☒ The Commissioner is hereby authorized to charge the requisite fee of \$130.00 and any additional fees which may be required, to Deposit Account No.06-1315; Order No. TYHC:0110-5 (009103-009632US).

☒ PTO suggested wording for terminal disclaimer was

☐ unchanged ☒ changed (if changed, an explanation should be supplied).

Paragraph in bold added for compliance with 37 C.F.R. § 3.73